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OFFICIAL MAPS AND MAPPED STREETS IN THE UNITED STATES

A THESIS

Presented to

the Faculty of the Graduate Division

by

Hal A. Davis

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of the Requirements for the Degree

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OFFICIAL MAPS AND MAPPED STREETS

IN THE UNITED STATES

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TABLE OF CONTENTS

Page

SUMMARY

The purpose of this study is to determine as nearly as possible the status of Official Maps in the United States. Investigated are the various state Official Map enabling acts, the extent of use of Official Map Ordinances by local governments, the experience in their use, and the legal status of Official Map controls as viewed by the law courts.

Nineteen states were found to have Official Map authorization, either explicit or implied. This legislation was analyzed and compared. It was found that only Pennsylvania required any of its local governments to adopt Official Maps. Few states authorize the reservation of sites other than future streets; four states authorize only the use of eminent domain in reserving sites shown on the Official Map. Relief for hardship cases is primarily provided by boards of appeal.

Names of communities having Official Maps were obtained from inquiries to all 50 states. A questionnaire was sent to 84 selected communities in which ordinances were reported, and 41 answers were received. The number of communities having Official Maps has increased rapidly since 1935. Answers to the questionnaire disclosed that in actual practice variances to the Official Map are seldom granted. The answers also indicated that these communities consider the Official Map to be a valuable control device.

The decisions and opinions of the courts in cases regarding Official Maps vary. However, when such cases were

viewed chronologically, it was found that Official Maps, in themselves, are constitutional. Court decisions finding unconstitutional the use of the Official Map were generally based upon the individual application of the restrictions, or upon the absence of adequate means of relief for cases of undue hardship.

CHAPTER I

INTRODUCTION

An "Official Map" is a term used to designate a map which shows the precise location of existing and proposed streets. In some cases it includes sites for public buildings and public open spaces. The Official Map Ordinance protects the planned future sites shown on the Official Map by prohibiting the erection of structures within them.

A special type of Official Map is used in Massachusetts, where conditions are shown only as they exist today and the map is not used for the reservation of sites. This investigation is limited to the study of those Official Maps used for the reservation of future public sites.

In some states, when referring to this control device, or limited use of it, terms other than "Official Map" may be used, such as Mapped Streets, Official Plan, Precise Plans, etc. However, for the purposes of this study the terms "Official Map" and "Official Map Ordinance" will be used.

The need for reserving sites.--The prevention of an unnecessary increase in the cost of acquiring future public sites is one of the major advantages of an Official Map. When plans for future streets, public buildings, or public open spaces are developed, the property may be vacant. However,

when the time comes to carry out the plans, it is often found that the owners of the property have made, on the sites, structural improvements which are permanent and high in value. The cost of carrying out the plans then becomes far greater than was anticipated when the plans were made. Indeed, so much development may have taken place that the abandonment of the highway route or public building site becomes necessary. With an Official Map the construction of structures within the mapped sites is prevented and hence the community is saved the unnecessary and unplanned for additional cost of acquiring them.

An Official Map thus helps to insure the future implementation of plans for public acquisition of desirable future public sites.

History of the reservation of sites.--The Official Map has not always been used as we know it today in the United States. Originally, Official Maps protected only sites for future street rights of way. Today, however, many Official Maps also reserve public building sites and public open spaces.

The reservation of future streets is an old practice. At least four of the original thirteen colonies had laws designed to protect future streets from encroachment by private buildings. As early as 1807, a map of New York was adopted which designated future streets, and an ordinance was passed and enforced which prohibited compensation for

improvements to anyone who built in the proposed rights of way.[1]

Whereas in the early days of our country, the restriction of private building within mapped streets was considered to be an acceptable governmental control, by 1900 changes in state constitutions and judicial decisions had strengthened the protection of private property and made more difficult the defending of Official Map laws. The concept of the "taking" of property had grown more restrictive.

Since 1900 there have been both favorable and unfavorable court decisions on the constitutionality of Official Map controls. Today the question of their constitutionality is still uncertain.

Recently, however, there has been an increase in the number of Official Map Ordinances in the nation. Most of these ordinances contain provisions for means of relief for property owners who are caused undue hardship by the restrictions imposed. These provisions are intended to provide adequate protection of the rights of private property.

Objectives of the study.--The objectives of this study are: (1) to determine the extent to which Official Maps are being used today, (2) to determine the effectiveness of the use of Official Maps, and (3) to ascertain the attitude of the courts toward Official Maps.

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[1]American Society of Planning Officials, "Building Lines, Mapped Streets, Setbacks, Front Yards," Planning Advisory Service Information Report, No. 119, 1959.

CHAPTER II

EXISTING ENABLING LEGISLATION

Local governments are granted authority to adopt ordinances or resolutions for Official Maps in three ways: first, by special act passed by the state legislature granting this authority to certain communities only; second, by city charters; and third, by general enabling acts which apply to all cities or local governments of the state.

Because it was impractical to locate all private acts and city charters in the United States, this study of the grant of authority has been limited to only general enabling legislation.

States with Official Map Enabling Legislation

From a survey of the 50 state codes, it was found that 19 states have some form of general legislation authorizing the local adoption of an Official Map and Ordinance. A majority of the states which have authorized Official Maps are located east of the Mississippi River. This is not surprising, as these states are the older, more densely populated ones, where planning, itself, has been a part of their government far longer than in other states. The following table shows the states which have Official

Map enabling legislation and their location in the United States:

Table 1

Northeast	Midwest
* 1. Maine	* 1. Illinois
* 2. New Hampshire	* 2. Michigan
* 3. New Jersey	3. Minnesota
* 4. New York	4. North Dakota
* 5. Pennsylvania	* 5. Wisconsin
South	**West**
* 1. Alabama	1. California
2. Arkansas	2. Colorado
* 3. Georgia	3. Utah
* 4. Kentucky	4. Washington
* 5. Maryland	

* States east of the Mississippi River.

Provisions in Official Map Enabling Legislation

Official Map enabling legislation contains a variety of provisions. This legislation is studied under the following headings:

1. Implied Authorization
2. States Requiring Official Map Ordinances
3. Type of Sites Reserved
4. Method of Reservation

5. Provision for Coordinated Regional Plans

6. Provisions for Means of Relief

Implied Authorization

In most states the enabling legislation which authorizes local adoption of Official Maps explicitly describes the nature of the Official Map and the method of administration.

However, in a few states, authorization for the adoption of Official Map controls and administration are only implied. According to Mr. E. W. Demars, Planning Director of the County of Monterey, California, the following two sections of the general codes of California grant authority for local governments to adopt an Official Map and Ordinance:

> 65600 - Precise Plans: Preparation: Recommendations to Legislative Body. From time to time the planning commission, or the planning department may, or if so directed by the legislative body shall, prepare precise plans based on the master or general plan and drafts of such regulations, programs, and legislation as may if (sic) in its judgment be required for the systematic execution of the master or general plan and the commission may recommend such plans and measures to the legislative body for adoption.
>
> 65601 - Same: What Precise Plans May Include. The precise plans may include
> (a) Proposed regulations limiting the use of land and buildings, the height and bulk of buildings, and the open spaces about buildings
> (b) Proposed regulations limiting the location of buildings and other improvements with respect to existing or planned rights of way
> (c) Such other matters which will accomplish the purpose of this chapter, including procedure for the administration of such regulations.

In Section 65600 the words " . . . such regulations, programs, and legislation as may, if (sic) in its judgment be required for the systematic execution of the master or general plan . . ." seem to give enough latitude for the adoption of an Official Map and Ordinance.

Section 65601(b) primarily authorizes street set back requirements. However, the authorization to regulate the location of buildings in planned as well as existing rights of way implies the power to adopt an Official Map Ordinance.

Arkansas legislation is somewhat similar to that of California. Mr. William S. Bonner, Associate Professor of the City Planning Division of the University of Arkansas, pointed out the following section of the Arkansas code as giving Official Map powers:

> Act 186 of 1957, Sec. 5(d), Set back ordinance. When a master street plan has been adopted and filed as hereafter provided, the legislative body of the city, upon recommendation of the planning commission, may enact ordinances establishing set back lines on such major streets and highways as are designated by the plan, and may prohibit the establishment of any new structure or other improvements within such set back lines.

Section 4(d) authorizes the major street plan as follows:

> The master street plan. The planning commission may prepare and adopt a master street plan which shall designate the general location, characteristics and functions of streets and highways. The plan shall include the general locations of streets and highways to be reserved for future public acquisition; it may

> provide for the removal, relocation, widening, narrowing, vacating, abandonment, and change of use or extension of any public ways.

Because construction may be prohibited between the set back lines of planned streets as well as existing streets, this legislation, in effect, authorizes an Official Map Ordinance based upon the "master street plan."

The following section of the code of West Virginia, adopted in 1959, may grant sufficient authorization for an Official Map Ordinance; however, no one was found in the state able to confirm this:

> 525U (No. 36) Improvement Location Permits; Conformity to Comprehensive Plan and Ordinance. Within the corporate limits of a city, a structure shall not be located and an improvement location permit for a structure on platted or unplatted land shall not be issued unless the structure and its location shall conform to the comprehensive plan and ordinance. A structure shall not be located and an improvement location permit shall not be issued for a structure on unincorporated lands within the jurisdiction of the commission unless the structure and its location conform to the comprehensive plan and ordinance, except that, if the lands lie within a county which has adopted a comprehensive plan and ordinance, then the city comprehensive plan and ordinance shall not apply and the structure must conform to the county comprehensive plan and ordinance (1959 c. 118.)

The comprehensive plan referred to (Section 525A 16) covers not only those sites which other states reserve for public use, but all "recommendations for the development of the territory covered by the plan."

General wording of enabling legislation has the advantage of granting communities a flexible power that can be easily adapted to local conditions. However,

because of the lack of specific guidance by the act, the constitutionality of specific provisions of an ordinance, being only authorized by implication, often has to be decided by the courts. More specific legislation can avoid this expense and uncertainty.

States Requiring Official Map Ordinances

The State of Pennsylvania is the only state that requires communities to adopt an Official Map Ordinance. There it is required of all cities of the third class.

Types of Sites Reserved

Twelve states authorize Official Maps with street rights of way only while seven authorize the inclusion of sites for other purposes. These are shown in the following table:

Table 2

Official Map General Enabling Legislation

Site Reservation for Future Streets Only	Site Reservation for Public Facilities in Addition to Future Streets
Alabama	Georgia
Arkansas	Maine
California	Michigan
Colorado	Minnesota
Illinois	New Jersey
Kentucky	Pennsylvania
Maryland	Washington
New Hampshire	
New York	
North Dakota	
Utah	
Wisconsin	

Sites on map but not reserved.--A distinction should be made between those sites shown on an Official Map and those protected by the Official Map Ordinance. Two states, New York and New Hampshire, have enabling legislation for the adoption of an Official Map showing the exact location of future sites for certain public facilities in addition to street rights of way but with means of reserving only the street rights of way.

The adoption of such an Official Map, lacking controls prohibiting construction within future public sites, still has certain advantages to the local government, such as guidance in the approval or disapproval of subdivision plats. However, other parts of the comprehensive plan, such as school plans, park plans and the like can serve the same function.

Sites reserved for purposes other than future streets.--Of the seven states which provide for reservation of sites other than future streets, four grant authority to reserve future sites for any public purpose. These are Maine, Michigan, Minnesota, and Washington. In Pennsylvania, in addition to streets, only parks and playgrounds are eligible for reservation on Official Maps. Georgia authorizes streets, public building sites, and public open spaces. New Jersey authorizes the reservation of only drainage rights of way in addition to street rights of way.

The following table shows the sites, in addition to street rights of way, that may be reserved in Official Maps in each of the seven states:

Table 3

Terms Describing Sites Reserved	Ga.	Me.	Mich.	Minn.	N.J.	Pa.	Wash.
Public building sites	x						
Public open spaces	x						
Public property		x	x				
Public parks			x			x	
Public playgrounds						x	
Other public grounds			x				
Drainage rights of way					x		
Other public facilities							x
Other public uses				x			

Method of Reservation

The reservation of future streets, future public building sites or future public open spaces by the use of an Official Map is provided for by state enabling legislation in two ways.

Police power.--First, local governments may adopt ordinances under the police power which will prohibit the issuance of permits for building within reserved sites. In this type of ordinance, no compensation is paid for the loss of the right to build on the property. Provisions permitting variances for hardship cases are generally included. This type of legislation is the most common.

Eminent domain.--The second method of reservation uses the right of eminent domain. In this case, when property is reserved on an Official Map, any property owner who protests is compensated for the reservation.

In four states, Alabama, Colorado, Kentucky, and North Dakota, the Official Map enabling legislation authorizes only the use of the right of eminent domain to reserve sites.

As a part of the enabling acts in Alabama, Colorado, and Kentucky, the maximum length of time property may be reserved is fixed. Financial compensation for damages is calculated for all property owners who claim damages, according to the length of time that the property is to be reserved.

In North Dakota there is no time limit, but compensation must either be paid to all those who claim damages caused by the reservation or else the reservation of the site must be abandoned. No compensation may be paid in North Dakota to anyone who does not protest within three months after the map is adopted.

In all four of these states no restrictions are placed on building within mapped sites; however, no compensation is paid at the time of acquisition for buildings erected after the property is reserved.

The following table shows the states in each category:

Table 4

Authority by Which Site Is Protected

Police Power		Eminent Domain
Arkansas	New Hampshire	Alabama
California	New Jersey	Colorado
Georgia	New York	Kentucky
Illinois	Pennsylvania	North Dakota
Maine	Utah	
Maryland	Washington	
Michigan	Wisconsin	
Minnesota		

Provision for Coordinated Regional Plans

Because cities usually expand beyond their original limits, it is often considered desirable for states to grant authority to cities for controlling growth in areas close to their corporate limits. In many states city zoning and subdivision authority has been extended a few miles beyond corporate limits. In Wisconsin, Official Map enabling legislation grants authority to municipalities to adopt Official Maps extending to three miles beyond their corporate limits. The advantage of such an arrangement is that sites planned for future public acquisition in those areas which will some day be a part of a municipality can be preserved from encroachments.

In New York State the situation is somewhat reversed. Chapter 740 of the laws of 1958 comprising Sections 239(g) through 239(k) provide that a county may adopt an Official Map with authority to reserve sites even within a municipality if the municipality itself has not adopted one of its own. The authority of the county exists even if the municipality disapproves of the plans, provided however that the Official Map must then be adopted by a two-thirds vote of the county board of supervisors.

Provisions for Means of Relief

The following provisions for relief for hardship cases are found in Official Map enabling acts of most states:

1. Time limitations on reservations
2. Modification of map
3. Board of appeals and its powers

Time limitations on reservations.--Some Official Map enabling legislation provides that mapped sites may be reserved for a limited time only. The purpose of these time limitations is to insure that the rights of private property owners are not infringed upon. Certainly, they can insure that an owner will not be required indefinitely to forfeit his right to build. However, short time limitations also limit the community's ability to implement long-range planning.

Six states require time limits on the reservation of sites. Three of these, Alabama, Colorado, and Kentucky, authorize the reservation of sites only by the use of eminent domain. The purpose of the time limits in the latter three states is to serve as a guide to the degree of damages caused by the reservation so that the compensation, which must be paid to protesting owners, can be more easily calculated. Hence, the time limitations of these three states cannot be classified as means of relief. However, the provisions of the other three states, Pennsylvania, Maryland and Michigan are truly provisions for relief.

In Pennsylvania, the enabling legislation requires in cities of the third class and in townships of the second class a limit on the reservation of mapped sites of three

years, and in boroughs a limit of two years from the passage of the ordinance. At the end of this time, unless the owner agrees to a further reservation, the community must condemn and purchase the site.

In Maryland and Michigan, the enabling legislation requires that, when a reserved street location is placed on the Official Map, the ordinance shall place a specific time limit on the reservation.

In New Jersey, the reservation of parks and playgrounds can be made on the Official Map for a period of one year. However, since the enabling legislation provides that these sites can be reserved only in connection with the approval of new subdivision plats, this provision is in effect only another form of a subdivision regulation.

Modification of Map.--One obvious method of granting relief to those property owners who are unduly injured by the Official Map is by amending the map. All states with Official Map enabling legislation grant the authority to modify mapped sites by amendment. However, five states, Alabama, Colorado, Kentucky, Maryland, and North Dakota, have a special provision for this.

In each of these states, the enabling legislation authorizes the planning commission to negotiate with any owner whose land contains a reserved street location and to agree upon a modification of the location. Such an agreement

must include a release by the owner of all claim of compensation for damages. The governing body must adopt or decline the modification. If it is adopted it becomes an amendment to the Official Map.

This provision is not only a source of relief to hardship cases, but it can also be of great value to the community. It makes possible a more certain reservation. If a cla'ms release is signed for a site in exchange for map modifications, there is no longer a question of undue hardship being imposed, and the plans are secure. An additional advantage is the ability of the planning commission to bargain with the owner and thereby secure an equitable agreement without having to purchase the property immediately in order to reserve it.

The disadvantage of such an arrangement is the danger of undesirable modifications being made in hardship cases to avoid the expense of purchasing the sites when actual acquisition of the property desired would be of greater benefit to the community.

Board of appeals and its powers.--The most important source of relief for hardship cases in most states is the board of appeals. The following 11 states in their Official Map enabling legislation require a board of appeals:

California	Minnesota	Pennsylvania
Georgia	New Hampshire	Utah
Maryland	New Jersey	Wisconsin
Michigan	New York	

In all of these states except Georgia the board of appeals is authorized to grant only one form of relief. This relief is the issuance of a permit to build. Conditions are stipulated which specify when and under what circumstances these permits may be granted.

In all of the above states except New Jersey, Pennsylvania, and Georgia a combination of two tests of hardship are required:

1. that the property in question cannot yield a reasonable return to the owner unless the permit is granted, and
2. that balancing the interests of the community in preserving the integrity of the Official Map and the interest of the owner in the use and benefits of his property, relief is required by considerations of justice and equity.

New Jersey and Pennsylvania substitute for the latter condition that the building permitted shall increase the cost of the right of way as little as practicable.

Four states, Maryland, Minnesota, New Jersey, and Pennsylvania, require that when the board of appeals grants a permit it specify the location, ground area, height, and other details of the extent and character of the building. Five other states, Michigan, New Hampshire, New York, Utah, and Wisconsin, allow the board to specify these details but do not require that they do so.

Michigan, New Hampshire and Utah, in addition, provide that the duration of the building or structure to be permitted may also be specified.

The provisions of the Georgia enabling legislation for relief through a board of appeals is considerably more extensive than of the other nine states. It provides that before the board may grant any relief the aggrieved owner must sign a sworn statement that the restrictions which the Official Map has imposed on his property have either:

1. interfered with the free sale of his property;
2. deprived him of an intended use otherwise consistent with the zoning laws; or
3. that balancing the interests of the community in preserving the integrity of the Official Map and the interest of the owner in the use and benefits of his property, relief is required by considerations of justice and equity.

The Georgia legislation limits the relief which the board may impose, either alternatively or conjunctively, to the following:

1. it may grant five-year tax relief on the property where the land is not in use;
2. it may grant a permit to build and may specify the exact location, ground area, height, materials of construction, and other details and conditions of extent, character, and duration of the building;

3. where the Official Map interferes with the free sale and disposition of a site, it may order the governing authority within not more than 100 days to either permit the sale of the property free and clear of the imposed restrictions or to institute condemnation proceedings or negotiations to acquire the property.

Summary

Nineteen states have Official Map enabling legislation. Ten are located in the eastern half of the United States. Most of the Official Map enabling acts authorize in specific language the adoption of an Official Map and Ordinance; however, in four of the states this power is only implied.

In 12 of the states with Official Map enabling legislation, authority is given to reserve only future street sites. In the other seven states, authority also is given to reserve other public sites.

There are two methods which may be used in Official Map Ordinances to reserve sites. The first is by the use of the police power. This method prohibits the issuance of building permits for construction within the reserved sites with no compensation. Exceptions are made for hardship cases. The second method uses the right of eminent domain, which requires that the local government compensate the property owner for loss of the right to build on his property. Four states

grant the power to reserve sites by means of eminent domain. In none of these states was there found a community which has adopted an Official Map Ordinance using this authorization.

There are three means of relief for property owners who are unduly damaged by the reservation of their property.

Some states limit the time which the site may be reserved. This is for the protection of the property owner. However, it should be remembered that time limitations also limit the usefulness of the Official Map Ordinance.

Another means of relief for hardship cases, as well as a device designed to protect the effectiveness of the Official Map, is the right to modify the Official Map in exchange for the owner's release of claims for damages caused by the restrictions. This device makes possible equitable, secure compromises which otherwise could sometimes not be obtained.

The major source of relief for hardship cases comes from the board of appeals. Ten states require a board of appeals for this purpose. These are: Georgia, Maryland, Michigan, Minnesota, New Hampshire, New Jersey, New York, Pennsylvania, Utah, and Wisconsin. In all of these states except Georgia, the only relief which the board of appeals may grant is the issuance of a permit. General circumstances under which the permit can be issued are stipulated in the enabling legislation. The Georgia legislation also permits, under specified conditions, the granting of tax relief and

the ordering of the governing authority to either acquire the property or permit the sale of the property free of the reservation.

CHAPTER III

LOCAL GOVERNMENTAL USE OF OFFICIAL MAPS

Names of communities having Official Map Ordinances were obtained from inquiries to all 50 states.[1] Since all 50 states replied, a representative cross section of communities having Official Map Ordinances was obtained.

A questionnaire was sent to selected communities where Official Map Ordinances were reported. The questionnaire was designed to determine the general experience of local governments with this control device.[2] Eighty-four communities were sent questionnaires and 41 answers were obtained.

The use of Official Maps by local governments may be considered from three aspects:

1. Extent of use
2. Type of Official Map Ordinances
3. Experience of local governments with Official Map Ordinances.

Extent of Use

The extent to which Official Map Ordinances have and are being used is indicated by the increase in the number

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[1] See appendix, p. 53, for names of communities with Official Map Ordinances.

[2] See appendix, p. 56, for names of communities to which questionnaires were sent, and p. 58 for summary of answers.

of communities with Official Maps in recent years and by the number found to be presently using them.

Number of Ordinances in Force

Communities with Official Map Ordinances were reported in ten states which have enabling legislation authorizing them. The number in each state varied from one to 86 as follows:[3]

California	10	North Dakota	8
Colorado	1	New Hampshire	1
Kentucky	1	New Jersey	86
Maryland	4	Pennsylvania	(all third class cities)
Michigan	7	Wisconsin	67

In seven of the other nine states with Official Map enabling legislation, Alabama, Georgia, Illinois, Maine, Minnesota, Utah, and Washington, no communities with Official Map Ordinances were found. In Kentucky and Colorado, only Louisville and Denver were found to have Official Map Ordinances. However, both of these Ordinances were operating under authorization of private state statutes allowing them to enforce reservation of sites by means of the police power rather than by eminent domain which the general enabling legislation authorized.

Recent Growth in the Use of Official Maps

The rapid growth in the number of communities adopting Official Map Ordinances in Wisconsin is a primary example of

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[3]See appendix, p. 53, for names of communities with Official Map Ordinances.

a growing trend in the nation for communities to avail themselves of this type of control. A 1956 study made in Wisconsin indicated that 33 municipalities had adopted Official Maps. They comprised half of the second-class cities, half of the third-class cities, 7.4 per cent of the fourth-class cities, and 2.2 per cent of the state's villages. Since 1956, 34 additional Official Map Ordinances have been adopted, making a total of 67 Wisconsin municipalities having Official Map Ordinances.

A 1959 survey by the New Jersey League of Municipalities of all New Jersey communities indicated that approximately 82 per cent of the present 86 Official Map Ordinances in the state were adopted since 1950.

In the book, Building Lines and Reservations for Future Streets,[4] published in 1935, only six communities in the United States, Louisville, Kentucky; San Mateo County, California; Santa Clara County, California; Kern County, California; Rochester, New York; and Schenectady, New York, were reported at that time to have Official Map controls. The contrast between the few ordinances reported in use in 1935 and the number found to be in use at present is another indication of the growing acceptance of the Official Map Ordinance.

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[4]Black, Russell Van Ness, Building Lines and Reservations for Future Streets, Cambridge: Harvard University Press, 1935.

Among the 41 communities which answered the questionnaire, the dates of adoption of their Official Map Ordinances were found to range from 1921 to 1960. Fifty-six per cent of these communities had adopted their ordinances since 1950, twenty-five per cent between 1940 and 1950, and only nineteen per cent before 1940.

Type of Official Map Ordinances

Judging from the questionnaire sampling, very few communities are using Official Map Ordinances to reserve sites other than future streets. Out of the seven states which authorize the reservation of public sites, in addition to future streets, communities in only the three states of Michigan, New Jersey, and Pennsylvania were found to have Official Maps in use. Among six communities found in Michigan which have Official Maps, only four reserve sites other than streets. Of the four cities in Pennsylvania which answered the survey, three reserved only streets; the fourth reserved future park and playground sites also. The New Jersey Official Map enabling legislation limits Official Map Ordinances in that state to the reservation of future streets and drainage rights of way. Of the six answers received from New Jersey, only three communities were using the Official Map Ordinance to reserve drainage rights of way.

No communities were found which have Official Map Ordinances reserving sites by the right of eminent domain.

It was the opinion of Mr. Otis M. Trimble, Assistant Director of the Kentucky State Planning Office, that the necessity of having to pay compensation, if demanded, makes authorization for the adoption of this type of ordinance virtually worthless.

Experience of Local Governments with Official Maps

When a community is considering the adoption of an Official Map Ordinance it should plan the financing of the development and operation of the Map and Ordinance as well as anticipate the future effectiveness of the Ordinance. The experiences of local governments which have Official Maps should be helpful at this point.

Financing the Development and Operation of an Official Map

Two important financial considerations in the development and operation of an Official Map are the laying out of reserved sites and the purchase of sites which, because of undue hardship imposed by the restrictions, must be acquired prior to the time they are actually needed.

The laying out of reserved sites.--Two methods are used to lay out reserved sites: one, an engineers' field survey; the other, the use of aerial photos or other reasonably accurate maps. The first of these methods is of course the most effective. The latter method is less accurate, but less expensive.

When the planning officials of local governments with Official Maps were asked what method was used in their communities, 16 stated that an exact engineers' survey was carried out. Eighteen stated that a combination of everything available such as maps, aerial photos, and existing engineers' surveys were used. Six did not answer. Since none of the communities indicated any trouble with the method that they used and all answered that their Official Map Ordinances were effective, it seems that an engineers' field survey is not necessary in all cases when laying out lines of reserved sites.

The raising of money to purchase reserved sites in cases of hardship.--Where undue hardship exists, sometimes either permission to build must be granted or the site must be acquired. Acquisition of the site in cases like this is, of course, the desirable alternative.

It is therefore necessary to have enough money available to finance such acquisition as the need arises. This may be thought by some to necessitate a large investment in a special fund by the community.

Although the setting aside of a special fund, such as a revolving fund, for this purpose is a desirable method of meeting this need, it does not seem to be necessary. Of the 41 communities which answered the survey, none indicated that they have a special fund set aside for purchasing sites to

relieve hardship cases. Instead of a fund, most communities draw on general revenues to finance these purchases.

Two communities use benefit districts to finance the purchase of sites. These are Monterey County, California, and Green Bay, Wisconsin. In this system of financing, those property owners whose property increases in value because of public improvements are assessed for all or a part of the increase and thereby help to pay for the improvement.

Effectiveness of Official Map Ordinances

How much discretion is used by boards of appeal in granting variances to the Official Map? How valuable do local government authorities consider their Official Map Ordinances? The answers to these questions can be valuable in judging the actual effectiveness of existing Official Map Ordinances in reserving sites for future acquisition.

Granting of variances.--Facts revealed in the survey indicated that in practice the power to grant variances is seldom used. In reply to the question asking if many variances are granted for building within reserved sites, 63 per cent of those who answered indicated that no variances at all had ever been granted. In those communities which had never granted a variance to the Official Map Ordinance, the average duration of the enforcement of their ordinance was 11 years. All of them have a board of appeals.

Of 11 communities which answered that variances are sometimes granted, six stated that they are usually granted

only for temporary structures. In one city, Cincinnati, Ohio, the Assistant Planning Director stated that variances were frequently granted but mostly for remodeling or additions.

The length of time before the site is to be acquired is an influencing factor in the granting of variances in at least two places, Schenectady, New York, and Cincinnati, Ohio. There, if plans for acquisition of the site are indefinite or too remote, the board of appeals is inclined to grant a variance as a relief measure.

Communities estimate of value of the Official Map.--Answers to the survey indicated that the Official Map is considered by the local government officials to be an important tool.

There is no other governmental regulation which can accomplish exactly the same effect as the Official Map. Some communities believe that their plans for the physical layout of their region can be adequately implemented simply by the use of subdivision regulations requiring plats to be designed in accordance with the established plan. This does in some cases accomplish one of the desired results of the Official Map in that it insures orderly development. However, only by the use of an Official Map Ordinance can sites not a part of a larger tract which is presently being subdivided be preserved from the encroachment of new buildings. Of the 41 communities answering the survey, when asked if their Official Map was used often or if subdivision regulations alone had been an adequate control in their community,

only three stated that their subdivision regulations had been adequate. Fifty-seven per cent indicated that their ordinance is used often, 24 per cent that it was not used often, and 19 per cent did not answer that question.

When planning officials were each asked if the Official Map Ordinances of their communities were effective, every answer was "yes." Although these answers are subjective in nature, the fact that those who use the Official Map Ordinances unanimously consider them an effective control device is an indication of the value of Official Maps.

Summary

The number of communities which have Official Maps has increased in recent years. Eleven of the 19 states having enabling legislation authorizing their adoption were found to have local governments which have Official Maps. Wisconsin in 1956 had 33 municipalities with Official Maps. Today the number is 67. A 1959 New Jersey Municipal League Survey indicated that 82 per cent of the present 86 Official Maps in the state had been adopted since 1950. Among the 41 communities which answered the questionnaire, 56 per cent had adopted their ordinances since 1950.

The predominant type of Official Map Ordinance in use is one which reserves only future streets. In only three states, Michigan, New Jersey and Pennsylvania, were there found any communities which have Official Map Ordinances reserving sites other than those for future streets, and even

in these states, where enabling legislation authorizes this, many communities still reserve only future streets.

Some states authorize in their general enabling legislation only the use of eminent domain. It is significant that all Official Map Ordinances in force reserve sites by means of the police power. It appears that the use of eminent domain to reserve sites is not practical, presumably because of the cost involved.

An exact engineers' field survey is not always used to lay out reserved sites on the Official Map. Fifty-four per cent of communities using Official Maps stated that they used an engineers' field survey and the rest reported that they used only aerial photos or existing maps.

None of the communities surveyed had a special fund available for purchasing sites when Official Map restrictions cause undue hardship to an owner. Instead, most reported that if it becomes necessary to purchase a site prior to the time it is needed, the general fund in the community is used.

The 41 communities answering the survey reported that Official Maps are a valuable tool. When asked if their Official Map was used often or if subdivision regulations alone had been an adequate control, only three communities stated that subdivision regulations had been adequate. When asked if they considered their ordinance effective, all answered "yes." The questionnaire disclosed that variances to the Official Map are seldom granted.

CHAPTER IV

THE LEGAL STATUS OF OFFICIAL MAP CONTROL

Official Map Ordinances as used today may be considered to be constitutional, although the specific application of them with respect to particular landowners is sometimes ruled unconstitutional. Upon first reading of the legal decisions pertaining to Official Map Ordinances, it would appear that the constitutionality of Official Map reservations is very uncertain. However, if the decisions and opinions of the courts are considered in relation to their chronological time and in relation to the means of relief available, it becomes apparent that a definite trend toward acceptance of these controls has developed, but an acceptance dependent upon adequate means of relief available in hardship cases.

Early cases upholding the official map.--During the first half of the nineteenth century the concept of the "taking" of property allowed considerably more restriction on the use of private property than it does today. A number of cases are on record which uphold the constitutionality of Official Map Ordinances of these days. These ordinances reserved mapped property by refusing any compensation at the time of acquisition for any structures built by the owner after the property was mapped. No means of relief for hardship cases were included in the ordinances.

One of the earliest court cases which tested the legality of the Official Map is the case In Re Furman Street, 17 Wend. 649, in 1836 in Brooklyn, New York. The Brooklyn map, adopted by the municipality in 1818, designated Furman Street as a future street. The property owner of land over which the future street was to cross erected buildings in the bed of the future street. When the street was opened in 1833, the city paid no compensation for the buildings. The court refused to declare the ordinance unconstitutional and upheld the refusal of compensation.

A similar case, from Pittsburgh, Pennsylvania, was In Re Forbes Street, 70 Pa. St. 125, (1871), in which the court declared that damages cannot be assessed for improvements made within the lines of a located but unopened street. The court is recorded as saying:

> The leading object of laying out of the city district, which was intended finally to become a part of the city of Pittsburgh, was that the owners of ground within it should know what portion of their property would be taken for streets and other public purposes. The portions laid out for streets were to be deemed taken and adjudged as public highways. If buildings were erected on ground to be taken, for streets of the first class previously to the plan and survey, then they were to be paid for, as well as the ground taken when the streets were opened; but if built after the survey and plan, of which map or plan all the freeholders, owning property in the said district had notice, under the provisions of the sixth section of the act of June 16, 1836, then it is clear such buildings were not to be paid for, for otherwise the map or plan would be entirely nugatory.

A change in the attitude of the courts.--During the last half of the nineteenth century a change took place in the attitude of the courts toward Official Map controls. Whereas until

that time these restrictions had been accepted per se, with no means of relief available, the courts then began to consider that the inability of some owners to make any use whatsoever of their property made Official Map controls unconstitutional.

One of the earliest cases which exemplifies this change is the case of Moale v. the Mayor and City Council of Baltimore, 5 Md. 314, 61 Am. Dec. 276 in the year 1854. The court observed:

> A person for an indefinite space of time may be deprived of the use of his property because it lies on the bed of a street designated on the plot of the city, and eventually find that whilst he has paid taxes, and been denied the advantages to which he was entitled from the proper use of his land, that the street laid down on the plot has been abandoned. Such a state of things is repugnant to every notion of justice and cannot obtain our consent.

The court decided that the owner of the property in question should be awarded damages.

In the year 1872 in a New Jersey case, The State, Wilkinson E. Jones, Prosecutor v. John H. Carragan, Collector and c., Bayonne, 36 N.J.L. 52, the court decided that the practice of not allowing compensation at the time of acquisition for buildings built after the site was reserved was not constitutional. In this case, the court held that while the opening of the street was in abeyance, the landowner could not legally be deprived of the right to use his land in any lawful manner. The court contended that to disallow compensation for a building which was erected before the ordinance opening the street was passed would in effect be to allow a

"taking" of private property for public use without making just compensation.

In 186[illegible] the New York court in the case of In Re Rogers Ave., 22 N.Y.S. 27, concerning the laying out of a road in Kings County, New York, followed the same line of thought as above and declared that the enforcement of the Official Map Ordinance as it then was written constituted the taking of property without compensation.

Later in 1893 the Court of Appeals of New York, in Forster v. Scott, 32 N.E. 976, held that a New York City statute which provides that no compensation shall be paid for structures erected upon land within the right of way of proposed future streets indicated on an Official Map constitutes an incumbrance on such reserved land and hence is a violation of the constitutional provisions against the appropriation of private property without just compensation.

In German American Real Estate Title Guarantee Co. v. Meyers et al, 32 App. Div. 41, 52 N.Y.S. 449 (1898), a case concerning some Brooklyn, New York property, the Supreme Court of New York held that such laws are unconstitutional and hence do not create an incumbrance on property. Again in the case In Re Opening of Avenue D in New York, 200 N.Y. 535, 93 N.E. 498 in 1910, a New York court once again decided that refusing compensation for buildings built in the bed of a mapped street in New York City was unconstitutional.

Pennsylvania changed its attitude late.--When in other states the courts were finding the use of Official Map legislation unconstitutional, the Pennsylvania courts continued to uphold these ordinances. During the period from 1895 to 1915 there were three cases testing the legality of Official Map Ordinances in Pennsylvania, all of which upheld their constitutionality. Two of these cases, Buesch et al v. City of McKeesport, 30 Atl. 1023 (1895), and In Re Harrison's Estate, 95 Atl. 406 (1915), concerning property in Philadelphia, were tried in Pennsylvania's Supreme Court. The third case, in 1914, was a Federal District Court case, Harrison et al v. City of Philadelphia, 217 Fed. 107. The court held that two statutes of Pennsylvania, which provide that a property owner is not entitled to damages for any building erected within the lines of a plotted street after it has been plotted by the city of Philadelphia, are constitutional. They stated that neither the enactment of the statutes nor the plotting of a street over the lands of a property owner constitute a "taking" of property without due process of law as prohibited by the Fourteenth Amendment of the Federal Constitution.

Finally the attitude of the Pennsylvania courts also changed. However, instead of finding unconstitutional the restriction which the Official Map Ordinance imposes on a private property owner in the use of his property, they indicated that the lack of relief measures for those property owners suffering undue hardship was the feature of the

ordinance to which they objected. This decision was made by the Pennsylvania Supreme Court in 1915, In re Philadelphia Parkway Between City Hall and Fairmont Park, 250 Pa. 257, 95 Atl. 429.

In this case the court expressed its approval of the basic principles behind the Official Map:

> As applied to the plotting of streets through unimproved land, or as to projected streets in sparsely settled urban communities, the principle is sound, and there is no disposition on the part of this court to make a departure from the settled rule of our cases. Let it then be understood that nothing said or decided in the present case is intended to vary, modify, or change the firmly established doctrine to which reference has just been made. As to ordinary cases relating to laying out, opening, widening, extending and grading streets, lanes, and alleys, the settled rule relied on by the city as to the time of the taking and as to when the trespass, if any, was committed, still remains in full force and effect.

However, the court stated that because of the long deprivation of property rights to the owner, this situation was different.

> The city asserts the right to thus proceed on the theory that until councils pass an ordinance to open the boulevard a property owner, no matter what injury he may have sustained, does not have the right to have his damages assessed; and this upon the ground that such action is necessary to constitute a taking of property for public use. This is the general rule, but let us see whether it applies to the present case. Here some properties have already been taken by condemnation; some have been acquired by purchase; some buildings have been torn down; some work has been done on parts of the parkway; some improvements intended to add beauty have been constructed; and, in short, many of the necessary steps have been taken looking to the completion of a boulevard in keeping with the progressive spirit of a metropolitan city. These things have been done at intervals during the past 10 or 12 years, while the great majority of the property owners waited for the city to do something to relieve them from the hardships of the situation in which they were placed through no act or fault of their own.

The court went on further to say:

> More than ten years have passed since the beginning of the undertaking without an ordinance to open. During this period lands have been condemned for parkway purposes in some instances, properties purchased in other, improvements have been made and work done on parts of the boulevard, and $5,000,000 (one-third of the estimated cost of the entire improvement) have been expended. . . . The statement of these facts is sufficient to show that the rule in its essence was never intended to apply to a case like the one at bar. . . . The municipal arm of the city has lain upon all properties within the lines of the parkway, with such restrictions and limitations as are implied thereby, for a period of about 12 years. New buildings cannot be erected, nor can valuable improvements be made, without risk of loss. Rental values have been depreciated and general market values seriously affected. Certainly this condition of affairs should not be permitted to continue indefinitely without redress to property owners who are injured thereby.

The court decided in favor of the appellant and labeled what the city had done "a taking in the constitutional sense."

Because of this decision, Pennsylvania incorporated into the enabling legislation for Official Map Ordinances a requirement of a five-year time limitation on the reservation of private property, a feature which is today the major means of relief of Pennsylvania Official Map reservations.

In 1929, Philadelphia's Official Map Ordinance, with its new five-year time limitation provisions, was tested in the case In re Philadelphia Parkway Between Twentieth and Twenty-second Streets, 145 Atl. 600. In this case the Hahnemann Medical College and Hospital argued that they were prevented from making ordinary use of their property because they could not obtain a permit to build on a part of it which was reserved for an extension of the Parkway. The court

refused to award damages on the ground that petitioner's rights were controlled by the Act of 1915 which said that in the absence of an ordinance opening a new street or parkway, an owner of land within the mapped lines of the street must wait five years from the time the land is plotted before the right to compensation arises. The court stressed that this five-year time limitation provision was for the protection of the property owner.

> The effect of the Parkway Case is to hold that a delay of ten or eleven years under the particular circumstances there involved, without such formal act by the city as would entitle the property owner to claim damages, was an unjust deprivation of property without compensation for an unreasonable time, a condition of affairs which should not be permitted to continue indefinitely without redress to property owners who are injured thereby. The Legislature by the Act of 1915 has seen fit to further limit the power of the municipality by restricting its locus penitentiae (the opportunity of withdrawing from a projected contract before the parties are finally bound) to a period of time less than half of what was present in the Parkway Case. The act is accordingly beneficial to the property owner, and designed to protect his rights rather than to deprive him of them.

With the new five-year limitation on site reservations by Official Map Ordinances the courts again had no objection to such control.

In 1921 in Herman v. North Pennsylvania R. Co., 113 Atl. 828, the Supreme Court ruled that the Philadelphia Official Map Ordinance forbidding the compensation of property owners for buildings erected in the bed of mapped streets after the adoption of the map was a constitutional provision. The court observed, "We have repeatedly decided that no damages

are collectible until a legal opening occurs, by the actual taking of land. . . ."

In 1925, a Pennsylvania court in Ritter v. Hill, 127 Atl. 455, ruled that the reservation of the property in question, located in Philadelphia, Pennsylvania, constituted an incumbrance on the property for sale purposes. However, the court did not rule here against the constitutionality of the restrictions per se.

In Griffin v. City of New Castle, Appellant, 88 Pa. Superior Court Reports 439 (1926), the question before the court was whether condemned property should be assessed for just the difference between the fair market value of the property before and after a street widening, or whether additional compensation should be paid for the loss of property rights during the time the property was reserved. The court held that the reservation was not a taking of property and hence no additional compensation was due.

Recent court decisions upholding the official map.--The major difference between the Official Map Ordinances of today and those before 1900 is the relief provisions incorporated within the more recent ordinances. In most communities this relief is provided by a board of appeals.

Relief provisions brought a renewed acceptance by the courts of the Official Map.

One of the leading cases which involves the legality of the Official Map is Headley v. City of Rochester, 247 App.

Div. 562, 288 N.Y.S. 277, in 1936. Sometime before this case the city of Rochester had passed an ordinance adopting an Official Map providing that no permit be issued for any building in the bed of any street or highway shown or laid out on the map.

The Official Map, as adopted, reserved a portion of the plaintiff's property. He instituted a proceeding to have the ordinance declared unconstitutional upon the ground that it deprived him of his property without the payment of compensation therefor. In answer to this contention the court observed:

> The mere adoption of a general plan or map showing streets and parks to be laid out or widened in the future, without acquisition by the city of title to the land in the bed of the street, can be of little benefit to the public if the development of the land abutting upon and in the bed of the proposed streets proceeds in a haphazard way, without taking into account the general plan adopted and, especially, if permanent buildings are erected on the land in the bed of the proposed street which would hamper its acquisition or use for its intended purpose.

The court showed its concern over the means of relief available in the ordinance:

> On the other hand, to leave the land in private ownership, and, without compensation to the owner, incumber it with restrictions upon its use which would result in diminution in its value, might be inequitable and perhaps even beyond the power of the state. To meet the difficulty, the Legislature has provided in section 35 of the General City Law that, 'for the purpose of preserving the integrity of such official map or plan no permit shall hereafter be issued for any building in the bed of any street or highway shown or laid out on such map or plan, provided, however, that if the land within such mapped street or highway is not yielding a fair return on its value to the owner, the board of appeals or other similar board in

> any city which has established such a board having power to make variances or exception in zoning regulations shall have power in a specific case . . . to grant a permit for a building in such street or highway which will as little as practicable increase the cost of opening such street or highway, or tend to cause a change of such official map or plan, and such board may impose reasonable requirements as a condition of granting such permit, which requirements shall inure to the benefit of the city.'

The court indicated that the means of relief available made the ordinance a just regulatory device and hence was constitutional:

> If without building upon the strips of his land, which may, in the future be included in the widened streets, the plaintiff's property cannot be developed in manner which the plaintiff desires or which would best conduce to the enjoyment or profit which an owner might derive from his land, and, if it were shown that the statute, if valid, would require or even justify a denial of a permit for such development, the adoption of the map might constitute a grievance. In the absence of proof of such facts it is difficult to see how the plaintiff has been deprived in any manner of the use of his property. Before the court should even consider the question of whether the Legislature could under the police power restrict, without compensation, the use of land in private ownership, there should be proof at least that the statute is in some manner interfering with or diminishing the value of the present property rights of the person complaining. . . .

A similar recent case upholding the constitutionality of the Official Map in Saint George, New York, is John B. Patterson v. Radspi Realty and Coal Corp., 35 N.Y.S. (2d) 615, Court of Appeals of New York in 1943.

Again, in Vangellow et al v. City of Rochester et al, 71 N.Y.S. 2d 672 (1947) which involved set back requirements found in the Official Map, it was held that the city had

a right to impose conditions in the granting of a building permit within the lines of a proposed street, which would minimize the cost to the city in acquiring the property in the event of future condemnation. However, it was further stated that the conditions must be such that they do not materially diminish the value or usefulness of the premises. Here it should be pointed out that the purpose of the various means of relief is to insure these conditions.

Another recent case is Lansburgh v. Market St. Ry. Co., 220 P 2d 423 (1950). This California case involved the attempt of a person to recover earnest money paid for property found to be reserved by the San Francisco, California Official Map. The court ruled that the reservation did not render the vendor's title defective and did not entitle the purchaser to rescind the agreement.

This case, 25 years later than the Pennsylvania case of Ritter v. Hill, is a direct contradiction of the decision in the earlier case and illustrates the change in the attitude of the courts which took place during that time.

In Bibber v. Weber et al, 102 N.Y.S. 945, on February 14, 1951, the Supreme Court of New York declared that a property owner, who claimed the New York City Official Map Ordinance was unconstitutional because it prevented him from building on his property, was not within his rights in questioning the legality of the ordinance until all administrative privileges had been exhausted. It may be pointed out that by

this decision the court recognized the means of relief available through the board of appeals and acknowledged the function of relief measures in maintaining the constitutionality of the restrictions.

Probably the most recent case testing the legality of the Official Map was the Green Bay, Wisconsin, 1957 case of State ex rel Miller v. Manders, 86 N.W. (2d) 469. The court upheld the restrictions as constitutional.

Recent court decisions disallowing the Official Map.--Five recent court cases declared Official Map Ordinances, as they were presented to the courts, to be unconstitutional.

In the case of Kresge Co. et al v. City of New York, 87 N.Y.S. (2d) 313 (1949), the Supreme Court of New York declared that the Official Map Ordinance, as applied in that particular case, was unconstitutional. However, the court stated that the Official Map served a useful purpose and did not, in and of itself, constitute a taking of property included within the mapped street. In holding the statute unconstitutional, the Court observed:

> . . . Whenever a law deprives the owner of the beneficial use and free enjoyment of his property, or imposes restraints upon such use and enjoyment that materially affect its value, without legal process or compensation, it deprives him of his property, within the meaning of the constitution. . . . As the plaintiff in the case at bar was virtually deprived of the right to build upon his lot by the statute in question, and as this circumstance obviously impaired its value, and interfered with its disposition, it was to that extent void as to him.

In 1951, the Pennsylvania Supreme Court in Miller et ux v. City of Beaver Falls, 82 Atl. (2d) 34, declared that an

ordinance of the city of Beaver Falls was an incumbrance upon the plaintiffs' property, a cloud upon their title, and unconstitutional. The case involved the reservation of property for a future park site. The court expressed its belief in the injustice and unconstitutionality of even three years of reservation, three years being the time limitation in Pennsylvania for the reservation of park sites: "The injustice to property owners of permitting a municipal body to tie up an owner's property for three years must be apparent to everyone." However, in referring to the reservation of streets the court stated that the law with respect to streets is too firmly established in Pennsylvania to be changed, but that is no reason or justidication for extending it to include the reservation of park sites.

In the case of Roer Construction Corporation v. City of Rochelle, 136 N.Y.S. (2d) 414 (1954), the Supreme Court of New York found the Official Map restrictions as they applied to that particular case to be unconstitutional. The court stated the problem as follows: "May the defendant city, without compensating the plaintiff, tie up, for an indefinite period of time, the use of all of the plaintiff's property by a threatened future taking for highway purposes?" The court said that where a municipality so restricts the use of property that it cannot be used for any reasonable purpose, then the act of the municipality goes beyond the bounds of

permissive regulations and must be recognized as a "taking" of the property.[1]

Probably the most recent court case which was decided against an enforcement of an Official Map Ordinance was Rand v. City of New York, 155 N.Y.S. (2d) 753, (1956.) The case was an appeal to the Supreme Court of New York. The complaint was against conditions which had been required by the Board of Appeals when they had allowed the issuance of the building permit. A variance had been granted on condition that in the event of condemnation the cost of the building would be amortized over a term of ten years at the rate of ten per cent per year. The court held that the city had so restricted plaintiff's use of her property that it could not be used for any reasonable purpose for an indefinite period of time, and thus the regulation constituted a taking of the property. The court went on to say that the building would have a useful life of 50 years. However, the plaintiff would receive no compensation after ten years of use in the event of condemnation. Plaintiff's motion for summary judgment was granted.[2] This case is another example of the application of the ordinance, and not the ordinance itself being judged unconstitutional.

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[1]American Society of Planning Officials Zoning Digest, Vol. 7, 1954, p. 78.

[2]American Society of Planning Officials Zoning Digest, Vol. 8, 1956, p. 276.

One recent case, held in 1948, is difficult to explain, Grosso v. Board of Adjustment of Millburn Tp. in Essex County et al, 61 A (2d) 167. In this case the New Jersey Superior Court made the following statement:

> It was plainly not open to the defendant municipality, in the exercise of the planning power, to dedicate the locus to highway uses on the Official Map and thereby deprive the landowner of all use thereof, without making compensation, until the municipality was prepared to lay out the street. That would constitute a palpable deprivation of the property without due process of law. The amendment of the ordinance does not purport to be the exercise of the power of eminent domain. Rather it was deemed to be a valid regulation under the police power. . . . Such interference with the landowner's exclusive right to the possession, use and enjoyment of his property would infringe the cited constitutional guaranties. This would be a public use for which private property is subject to appropriation only under the power of eminent domain. Private property may not be confiscated under the guise of police regulations.

This case, although it is significant in that it finds Official Map restrictions unconstitutional per se, is, nevertheless, a single case among many in other states with contrary decisions. It is believed not to have set an important precedent.

Summary.--When first reading the legal decisions pertaining to Official Map Ordinances, it would appear that the constitutionality of Official Map restrictions is uncertain. However, if the decisions and opinions of the courts are considered in relation to their chronological time, it becomes apparent that definite trends have taken place through the years of Official Map use.

The very early years of Mapped Street Ordinances (other types of Official Map reservations are a recent device) found

consistent acceptance in the law courts. However, about the middle part of the nineteenth century a weakening of the courts' acceptance began to take place. By 1915 only the Pennsylvania courts had not declared Official Map Ordinances unconstitutional. At this time the Supreme Court of Pennsylvania found a particular application of the ordinance unconstitutional. It objected to long lengths of time for reservations of private property. The Legislature of Pennsylvania thereafter included in the Official Map enabling legislation a five-year time limitation on the reservation of property.

Soon after this addition to the Pennsylvania law, other states established another method of giving relief to hardship cases, namely the use of boards of appeal for granting variances.

With the establishment of boards of appeal and time limitations the law courts began once again to accept the reasonable enforcement of Official Map restrictions. Most courts which decided against Official Map Ordinances were opposed to their application under the particular circumstances involved.

One court in Pennsylvania recognized the legality of Official Map Ordinances in Pennsylvania, but did not uphold the constitutionality of reserving future park sites. Because of this case, future findings in other states of courts testing the legality of reserving future sites of facilities other

than streets is uncertain. At the least, the defense of such reservations has been weakened.

Another case, Grosso v. Board of Adjustment of Millburn Tp. in Essex Co. in New Jersey, found Official Map restrictions, as such, unconstitutional. This decision, however, is so unusual among so many contrary decisions in other states that it does not seem to have set any important precedent.

CHAPTER V

CONCLUSIONS

The Official Map and the Official Map Ordinance are becoming important tools of planning in the United States. The difference in the number of ordinances in force in 1935, when only six communities had Official Map Ordinances, and today, when Wisconsin, alone, has as many as 86, shows that a rapid increase in their use has taken place. Most of this increase in use has taken place in recent years, as shown by the survey of Wisconsin mentioned in Chapter III.

Among the 19 state Official Map enabling acts there is a wide difference in authorization. In those states with Official Map enabling legislation authorizing reservation only by eminent domain, no communities were found which were using such authorization. Indications are that the cost of operating such a control is prohibitive.

Even among the state acts which authorize the use of the police power in reserving sites, the purposes for which future sites may be reserved vary greatly.

Only the reservation of future street rights of way is well established in the United States. Official Map Ordinances which reserve sites for other public facilities are rare. Only seven state enabling acts authorize reservations for such purposes and, among these, only Pennsylvania, New Jersey, and

Michigan have communities using the authorization. New Jersey authorizes only reservation of drainage rights of way in addition to street rights of way.

The future status of Official Map Ordinances which reserve sites for other public facilities in addition to future streets is uncertain. The decision of the court in Miller et ux v. City of Beaver Falls sets a negative precedent for future decisions of courts testing the legality of these reservations. However, the same principles are involved in the reservation of any public facility, and because of this it would seem that if reservation of future street rights of way is constitutional, reservation of other public sites would be constitutional also.

The major source of relief for landowners who suffer undue hardship because of reservation of their property is through the board of appeals. The states place few restrictions on the board of appeals. The wording of the enabling legislation in effect leaves the effectiveness of the ordinance to the board's discretion. There is evidence, however, that few variances are actually granted. Those which are allowed usually have carefully considered conditions imposed which tend to minimize any negative influence on the effectiveness of the plan.

There are few instances in which purchase of property by the community has been necessary because of hardship. From this it may be concluded that a fund for the purchase of

such property in order to preserve the integrity of the plan need not be large or may be unnecessary.

As seen from a review of court decisions, the constitutionality of an Official Map Ordinance depends upon the existence of adequate means of relief. In general an Official Map Ordinance is constitutional; however, the particular application of an ordinance where adequate means of relief for hardship cases are not provided may be judged unconstitutional.

Thus, with the proper enabling legislation, well prepared plans, and well administered means of relief for hardship cases, the Official Map provides a valuable and effective planning tool for communities preparing for orderly growth.

A P P E N D I X

LOCAL GOVERNMENTS REPORTED TO HAVE OFFICIAL MAPS IN STATES WITH OFFICIAL MAP ENABLING LEGISLATION

State	Communities
Alabama	None
Arkansas	None
California	Butte County*
	Colusa County*
	Glendale*
	Hayward*
	Humboldt County*
	Kern County*
	Lassen County*
	Madera County*
	Merced County*
	Monterey County*
	San Jose*
	San Mateo County*
	Tulare County*
Colorado	Denver* (private act)
Georgia	None
Kentucky	Louisville* (private act)
Illinois	None
Maine	Cumberland*
Maryland	Annapolis*
	Baltimore*
	Rockville*
Michigan	Berkley*
	Escanaba*
	Grosse Pointe Park*
	Lansing*
	Marshall*
	Muskegon*
Michigan (cont.)	Port Huron*
	Saginaw*
Minnesota	None
North Dakota	Fargo*
	Bismark
	Minot
	Williston*
	Grand Forks
New Hampshire	Concord*
New Jersey	Allendale*
	Alpine
	Bergenfield
	Closter
	Demarest*
	Englewood Cliffs
	Haworth
	Hohokus*
	Leonia*
	Montvale
	Oradell
	Park Ridge*
	Ramsey
	Rutherford
	Saddle River
	Saddle Brook
	Teaneck*
	Wallington*
	Washington*
	Westwood
	Delanco*
	Lumberton
	Maple Shade
	New Hanover
	North Hanover
	Pemberton
	Riverside*
	Delaware
	Gibbsboro*
	Mount Ephrain*
	Middle

LOCAL GOVERNMENTS REPORTED TO HAVE OFFICIAL MAPS IN STATES WITH OFFICIAL MAP ENABLING LEGISLATION

State	Communities
New Jersey (cont.)	Essex Falls
	Livingston*
	Roseland
	West Orange
	Monroe
	North Bergen*
	Flemington*
	Kingwood
	Ewing*
	Hightstown
	Hopewell
	Princeton
	Middlesex
	Plainsboro*
	Asbury Park
	Brielle
	Farmingdale
	Freehold
	Oceanport
	Sea Girt
	Shrewsbury*
	Spring Lake Hights
	Boonton
	Chatham*
	Florham Park
	Morris
	Morris Plains
	Mountain Lakes*
	Parsippany-Troy Hills
	Passaic, Morris County
	Pequannock
	Victory Gardens
	Lakewood*
	Lavallette
	Passaic, Passaic County*
	Totowa
	Wanaque
	Wayne
	Lower Penns Neck
	Bernards
New Jersey (cont.)	Bound Brook
	Bridgewater
	Far Hills
	Franklin
	Manville
	North Plainfield
	Watchung
	Kenilworth
	Mountainside
	Roselle
	Scotch Plains
	Springfield
	Oxford
New York	New York City*
	Rochester*
	Schenectady*
	Westchester County*
Pennsylvania	All third-class cities
	Cities sent questionnaire:
	Allentown*
	Beaver Falls*
	Bethlehem*
	Chester*
	Easton*
	Erie*
	McKeesport*
	Pittsburgh*
Utah	None
Washington	None
Wisconsin	Algoma
	Appleton*
	Beaver Dam
	Beloit
	Big Bend
	Black River Falls

LOCAL GOVERNMENTS REPORTED TO HAVE OFFICIAL MAPS IN STATES WITH OFFICIAL MAP ENABLING LEGISLATION

State	Communities	State	Communities
Wisconsin (cont.)	Bonduel	Wisconsin (cont.)	Tomah
	Brillion		Twin Lakes
	Butternut		Two Rivers
	Cedar Grove		Waukesha
	Chilton		Wausau*
	Clintonville		West Bend
	Cudahy		West Salem*
	Dodgeville		Wisconsin Rapids
	Eau Claire		
	Elm Grove		
	Fond du Lac*		
	Green Bay*		
	Hartford		
	Hartland		
	Jackson		
	Juneau		
	Kaukauna		
	Kenosha		
	Kewaskum		
	La Crosse*		
	Manitowoc*		
	Marshfield		
	Menasha		
	Middleton		
	Mondovi*		
	Mount Horeb		
	Neenah		
	New London		
	Oconomowoc		
	Onalaska		
	Oostburg*		
	Oshkosh		
	Pewaukee		
	Plymouth		
	Port Washington		
	Reedsburg		
	Rothschild		
	Sheboygan*		
	Silver Lake		
	S. Milwaukee*		
	Spencer		
	Spring Green		
	Stoughton		

* Cities to which questionnaire was sent

LOCAL GOVERNMENTS REPORTED TO HAVE OFFICIAL MAPS IN STATES WITHOUT GENERAL ENABLING LEGISLATION FOR OFFICIAL MAPS

State	Communities
Louisiana	Alexandria*
	Benton*
	Pineville*
New Mexico	Albuquerque*
North Carolina	Durham*
	Greensboro*
	Hickory*
	Raleigh*
	Winston-Salem*
Ohio	Cincinnati*
	Youngstown*
Oregon	Gresham*

* Cities to which questionnaire was sent

QUESTIONNAIRE SENT TO COMMUNITIES REPORTED TO HAVE OFFICIAL MAPS

1. Date ordinance was adopted?

2. Is your ordinance used for future streets, street widenings, reservation of park sites, all of these, never been used because of newness of ordinance, or other?

3. When you put a street or site location on the map, do you survey it accurately or do you just show the general location? What method do you use to lay them out? (such as engineers' survey, aerial photos, etc.)

4. Do you use the ordinance much or have subdivision regulations been a sufficient control?

5. Would you say that your ordinance has been effective as is? If not, why not?

6. Have you permitted many buildings in reserved sites because of undue hardship and if so, under what circumstances?

7. Do you have a fund to purchase the site when forced to before actually needed? If not, how do you finance such a purchase? Please explain.

CONDENSED ANSWERS TO QUESTIONNAIRE

	1	2	3	4	5	6	7
Hayward, California	1957	future streets	engineers' field survey	ordinance used often	yes	few	general funds
Kern County, California	1940	future streets & widenings	aerial photos	used a few times	yes	no	no
Merced County, California	1954	future streets & widenings	general location, aerial photos	used often	yes	remodeling only	general funds
Monterey County, California	1941	future streets & widenings	general location	used often	yes	no	benefit districts
San Mateo County, California	1935	future streets & widenings	engineers' field survey	used often	yes	temporary structures	no
Santa Clara, California	1947	future streets & widenings	existing maps only	used often	yes	mostly movable or removable	--
Visalia, California	1935	future streets & widenings	general location, aerial photos	used often	yes	yes, hardship cases	no purchases
Denver, Colorado	1953	street widenings	engineers' field survey	seldom used	yes	no experience	no purchases

	1	2	3	4	5	6	7
Louisville, Kentucky	--	future streets & widenings	general location	--	yes	no	--
Montgomery & George County, Maryland	1927	future public sites	photo-grammetric maps	used often	yes	all easily movable	--
Berkley, Michigan	1952	parks & streets	general location	seldom used	yes	no	general funds
Escanaba, Michigan	1952	parks & streets	general location	seldom used	yes	no	general funds
Lansing, Michigan	1954	parks & streets	general location	seldom used	yes	no	general funds
Marshall, Michigan	1959	parks & streets	general location	--	yes	no	general funds
Muskegon, Michigan	1949	street widenings	--	seldom used	yes	many	--
Saginaw, Michigan	1953	street widenings	general location	seldom used	yes	none	--

	1	2	3	4	5	6	7
Concord, New Hampshire	1955	future streets & widenings	engineers' field survey	seldom used	yes- voluntary compliance	no	no - use public works fund
Ewing, New Jersey	1950	mostly used as subdivision control	general location	mostly used as subdivision control	yes	no	no
Hohokus, New Jersey	1953	--	engineers' field survey	seldom used- subdivision regs. sufficient	yes	none	no
Leonia, New Jersey	1921	mostly used as subdivision control	some general, some engineered	used often	yes	none	no
Livingston & Essex County, New Jersey	--	streets & drainage r/ws	engineers' field survey	well used	yes	none	no
Monroe, New Jersey	1955	streets & drainage r/ws	engineers' field survey	--	yes	some	no-capital improvement fund used
Mountain Lakes, New Jersey	1948	streets & drainage r/ws	engineers' field survey	--	yes	no	no

	1	2	3	4	5	6	7
Albuquerque, New Mexico	--	future streets & widenings	engineers' field survey	often used	yes	no	right of way funds
Rochester, New York	--	future streets & widenings	engineers' field survey	used seldom but needed	yes	few-inexpensive or easy to move	general funds
Schenectady, New York	1927	future streets & widenings	engineers' field survey	often used	yes	no	no - capital budget
Hickory, North Carolina	--	mostly used as subdivision control	general location	never used, subdivision regs. sufficient	--	no	--
Allentown, Pennsylvania	different for each street	future streets & widenings	engineers' field survey	used often	yes	--	city annual budget
Cincinnati, Ohio	1925	future streets & widenings	tax maps & aerial photos	used often	yes	frequently-mostly temporary improvements -some when plans are over 5 yrs. away	capital improvement fund

	1	2	3	4	5	6	7
Chester, Pennsylvania	different for each street	future streets	engineers' field survey	--	yes	none	no
Easton, Pennsylvania	different for each street	future streets	engineers' field survey	used often	yes	none	no
McKeesport, Pennsylvania	different for each street	future streets & Parks	engineers' field survey	--	yes	no	no
Appleton, Wisconsin	1954	future streets	general location	used often, no subdivision regs.	yes	none	no purchase
Fond du Lac, Wisconsin	1954	future streets	general location	used often, no subdivision regs.	yes	none	no
Green Bay, Wisconsin	1947	all future public sites	general location, aerial photos	used jointly	yes	yes-temporary structures	no fund, benefit districts
Manitowoc, Wisconsin	1947	all future public sites	aerial photos, etc.	used jointly	yes	very few	no specific fund

	1	2	3	4	5	6	7
Mondovi, Wisconsin	1950	future streets & widenings	engineers' field survey	seldom used, subdivision regs.	yes	no	no specific fund
Sheboygen, Wisconsin	--	future streets & widenings	general location, aerial photos	used often	yes	none	no specific fund
S. Milwaukee, Wisconsin	1955	streets & parks	general location, aerial photos	used often	yes	--	no specific fund
Wausau, Wisconsin	1955	streets & parks	aerial photos	used often	yes	no	new street fund
W. Salem, Wisconsin	1952	streets	general location	used often	yes	none	general fund

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